IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

OP.No. 2090 of 2000(W)

PETITIONER:

JOSE T.MATHEW, THURUTHUPALLIL, PAREEKAPEEDIKA,
VAZHAKULAM P.O., MUVATTUPUZHA (VIA)

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

RESPONDENTS:
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1. THE DEPUTY LABOUR COMMISSIONER (AUTHORITY UNDER KERALA PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1972), CIVIL STATION, KAKKANAD, KOCHI-682 030.

2. THE INSPECTOR OF AGRICULTURAL LABOUR, CIVIL STATION, DO. DO.

3. BIN P. ISSAC, PAREKKARA HOUSE, KOTHAMANGALAM - 686 691.

BY GOVERNMENT PLEADER SRI. SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF WRITTEN OBJECTION DT. 13-12-1994.

EXT.P2 REJOINDER DT. 6-2-1995.

EXT.P3 JUDGMENT DT.8-10-1997 IN O.P.NO. 14185/1997.

EXT.P4 NOTICE DT. 29-10-1997.

EXT.P5 REPORT DT. 3-9-1997.

EXT.P6 ORDER DT. 9-1-1998 PASSED BY R1.

EXT.P7 TRUE COPY OF EXT. R1 MARKED BEFORE 1ST AND 2ND RESPONDENTS.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 2090 of 2000

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Dated this, the 31st January, 2007.

J U D G M E N T

The petitioner, who was employed as a conductor in a bus owned by the 3rd respondent, challenges Ext. P5 report and Ext. P6 order of the authorities under the Kerala Payment of Subsistence Allowance Act, whereby petitioner's application for subsistence allowance has been dismissed on the ground that the petitioner was never put under suspension. The matter came up for enquiry before the District Labour Officer, before whom the petitioner contended that he was suspended from service on 6-11-1993 without a suspension order and later he was given a charge memo. He was not given termination notice also, according to the petitioner. Therefore, he prayed for a direction to the 3rd respondent to pay subsistence allowance to him from 6-11-1993.

2. The 3rd respondent-management contended that the petitioner was guilty of falsification of records and misappropriation of funds while working as conductor. He was charge sheeted and when he was confronted with documentary evidence he had to admit his guilt. Since he was reluctant to face the employer, he abstained from his work thereafter. The Union which espoused his cause also deserted him since they were also convinced about his guilt. Thereafter, the petitioner directly approached the management and left service after receipt of a lump sum amount as compensation on 6-4-1994, for which he has also issued a receipt. Accepting these contentions of the management, Ext. P5 report was submitted before the authority under the Kerala Payment of Subsistence Allowance Act, 1972, who passed Ext. P6 order accepting the report and rejecting the application of the petitioner.

3. The 2nd respondent has filed a counter affidavit in which it has been categorically stated that the 1st and 2nd respondents were

satisfied on the basis of the documentary evidence produced before them by the 3rd respondent that the petitioner was never suspended and in fact he left service after accepting compensation for which he has issued a receipt. That receipt was also produced as evidence before respondents 1 and 2, which evidence was accepted by respondents 1 and 2 in proof of the case of the 3rd respondent that the petitioner was never suspended by him.

On a consideration of the entire facts and circumstances of the case, I do not find any merit in the contentions of the petitioner. In any event, respondents 1 and 2, on the basis of the evidence before them, were satisfied that the petitioner has not succeeded in proving that he was suspended from service from 6-11-1993 or 14-11-1993. That finding being a finding on the basis of evidence, which cannot be said to be perverse, I cannot, in exercise of my jurisdiction under Article 226 of the Constitution of India, interfere with Exts. P5 and P6. Accordingly, the original petition is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/